

DOCKET FILE COPY ORIGINAL APR - 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Implementation of Section 302) CS Docket No. 96-46
of the Telecommunications Act)
of 1996)
)
Open Video Systems)

To: The Commission

COMMENTS OF TANDY CORPORATION

Tandy Corporation (Tandy), pursuant to 47 C.F.R. § 1.415(b), hereby respectfully submits its Comments on the Notice of Proposed Rule Making (NPRM) in the captioned proceeding.¹

I. INTRODUCTION

As one of America's leading retailers of high quality video wiring and customer premises equipment (CPE), Tandy has a significant interest in this proceeding. Each year, more than 60 million American consumers frequent one of the more than 7,000 Radio Shack, Computer City, Incredible Universe or other Tandy affiliated stores.

In these comments, Tandy explains why the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), does not permit cable system operators to operate open video systems. If the Commission does permit cable operators to provide video

1. NPRM released March 11, 1996, FCC 96-99.

programming through LEC open video systems, however, Tandy urges the Commission (1) to safeguard the right of consumers to purchase competitively available unbundled equipment pursuant to new Section 629(a) of the Communications Act and (2) to ensure the compatibility of any equipment provided by cable operators pursuant to Section 624A of the Act.

II. SUBSECTION 653(a)(1) DOES NOT PERMIT CABLE SYSTEM OPERATORS TO OPERATE OPEN VIDEO SYSTEMS

The Commission asks "whether subsection 653(a)(1) permits cable operators and others to become open video system operators, or whether they may be only authorized to provide video programming on others' open video systems." NPRM ¶ 64. The plain language of subsection 653(a)(1) and its legislative history demonstrate that Congress did not intend cable operators to operate open video systems and thereby circumvent important Title VI requirements. Subsection 653(a)(1) provides:

A local exchange carrier may provide cable service to its cable service subscribers in its telephone service area through an open video system that complies with this section. To the extent permitted by such regulations as the Commission may prescribe consistent with the public interest, convenience, and necessity, an operator of a cable system or any other person may provide video programming through an open video system that complies with this section. . . .

(Emphasis added.) Subsection 653(a)(1) thus permits LECs to provide cable service through an open video system but limits cable operators (and other nonLECs) to providing video programming through an open video system. By statutory

definition, the provision of video programming is a more limited activity than the provision of cable service:

- Video programming is "programming provided by, or generally considered comparable to programming provided by, a television broadcast station." 47 U.S.C § 522(20).
- Cable service, by contrast, includes not only video programming but also transmission of other programming service (that is, "information that a cable operator makes available to all subscribers generally," 47 U.S.C. § 522(14)) and subscriber interaction for use of such video or other programming services.

If Congress had intended cable operators to operate open video systems (that is, provide cable service over an open video system), it would not have restricted their activities to video programming only in subsection 653(a)(1).²

The legislative history of subsection 653(a)(1) confirms that Congress intended that only LECs would operate open video systems. The 1996 Act Conference Report plainly states that "section 653(a) focuses on the establishment of open video systems by local exchange carriers" H.R. Rep. No. 458, 104th Cong. 2d Sess., at 177 (1996) (emphasis added) ("1996 Act Conference Report").

The Commission suggests that competitive parity would be enhanced by allowing cable companies to operate as open video

2. The Communications Act defines a cable operator as an entity that provides "cable service over a cable system" 47 U.S.C. § 522(5). In the 1996 Act, Congress purposefully excluded open video systems from the definition of a cable system. See 47 U.S.C. § 522(7)(D). It follows then that a cable operator cannot operate an open video system and yet retain its identity as a cable operator.

systems. See NPRM ¶ 64. Congress, however, intended to create competitive parity between cable companies and LECs by applying less stringent regulation to LEC provision of cable service though an open video system. The conferees reasoned "that common carriers that deploy open [video] systems will be 'new' entrants in established [cable] markets and deserve lighter regulatory burdens to level the playing field." 1996 Act Conference Report at 178. One of the principal "reasons for streamlining the regulatory obligations of such systems . . . [is to] encourage common carriers to deploy open video systems and introduce vigorous competition in entertainment and information markets." Id. Congress thus intended to facilitate LEC competition with cable operators by easing the regulatory burden on LECs. In short, permitting cable operators to operate open video systems would thwart Congress' goal of enhancing competition in the video marketplace.

III. IF THE COMMISSION PERMITS CABLE OPERATORS TO PROVIDE VIDEO PROGRAMMING THROUGH OPEN VIDEO SYSTEMS IT SHOULD APPLY SECTIONS 624A and 629(a) TO THE PROVISION OF SUCH SERVICE

The clear language and legislative history of subsection 653(a)(1) do not permit a cable operator to operate an open video system. The Commission, however, may allow cable companies (and other nonLECs) to provide video programming through a LEC open video system subject to rules "that it deems consistent with the public interest, convenience, and necessity." At a minimum, the Commission should apply Sections 624A and 629(a) of the Act to

cable operators that provide video programming through LEC open video systems.

A. The Commission Should Not Permit Cable Companies And Others To Bundle CPE With Service Through LEC Open Video Systems.

The Commission should safeguard the right of consumers to purchase competitively available unbundled CPE by applying its new Section 629(a) implementing regulations to cable companies and others that provide video programming through LEC open video systems.³ Section 629(a) directs the Commission to

adopt regulations to assure the commercial availability, to consumers of multichannel video programming systems, of convertor boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor. . . .

Section 629(a) thus establishes the right of consumers to use their own CPE to receive service from a multichannel video programming distributor (MVPD).⁴ "One purpose of this section [629] is to help ensure that consumers are not forced to purchase or lease a specific, proprietary box, interactive device or other

3. Tandy and other parties have urged the Commission to adopt Section 629(a) implementing regulations in CS Docket No. 95-184, Telecommunications Services Inside Wiring/Customer Premises Equipment, NPRM released January 26, 1996, FCC 95-504.

4. An MVPD "means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming." 47 U.S.C. § 522(13) (emphasis added).

equipment from the cable system or network operator." 1996 Act Conference Report at 181.

The Commission's rules to promote the commercial availability of CPE from retailers and others cannot prohibit an MVPD from also offering CPE, provided that "the system operator's charges to consumers for such devices and equipment are separately stated and not subsidized by charges for any such service." (Emphasis added.) Section 629(a) thus requires cable operators (and other MVPDs) to separately state equipment charges and prohibits subsidizing equipment charges through program charges. It would be wholly inconsistent with the public interest to permit cable companies (and other MVPDs) to circumvent the important consumer safeguards embodied in Section 629(a) merely because they provide video programming through a LEC open video system.

B. The Commission Should Apply Its Equipment Compatibility Regulations To Cable Companies And Others That Provide Video Programming Through A LEC Open Video System.

The Commission's regulations implementing Section 624A of the Act have enabled consumers to begin to enjoy the many functions and features of their video-related CPE (such as remote control devices and simultaneous reception of two or more signals) unhindered by incompatible cable company equipment. See Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992, 9 FCC Rcd 1981 (1994). If the Commission permits cable operators and others to provide video programming through a LEC open video system, Tandy urges it

to apply its equipment compatibility regulations (see 47 C.F.R. § 76.630) to such entities thereby ensuring that consumers continue to enjoy the many features and functions of their CPE.

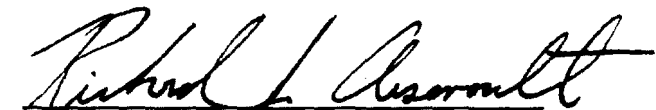
IV. CONCLUSION

Subsection 653(a)(1) does not permit nonLECs to operate open video systems. The Commission, however, may permit nonLECs to provide video programming through LEC open video systems. If it does, Tandy urges the Commission to apply Sections 624A and 629(a) to cable companies and others that provide video programming through a LEC open video system.

April 1, 1996

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Richard J. Arsenault, hereby certify that on this 1st day of April 1996, I caused a copy of the attached Comments of Tandy Corporation to be served by hand delivery to the following:

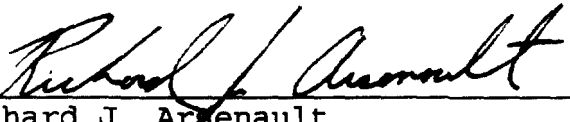
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